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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.163/2010

Wednesday this, the 8th day of September, 2010

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS.K.NOORJEHAN, ADMINISTRATIVE MEMBER

V.S.Binu, aged 37 years,
S/o Sadasivan,
Clerk-Typist,
Office of the Accountant General(Audit),Kerala,
Trivandrum
Residing at Poornima, Near Police Station,
Kovalam, Trivandrum District.

.. Applicant

By Advocate:Sri Mr.T.C.G.Swamy

vs.

1. The Comptroller & Auditor General of India,
Government of India,
10, Bahadur Shah Zafar Marg, New Delhi-110 124.
2. The Principal Accountant General(Audit),
Office of the Principal Accountant General(Audit)Kerala,
Thiruvananthapuram.
3. The Deputy Accountant General(Admn.)
Office of the Principal Accountant General(Audit)Kerala,
Thiruvananthapuram.
4. Ms.Aswathy V.S.
Deputy Accountant General(Admn)
Office of the Principal Accountant General(Audit)Kerala,
Thiruvananthapuram.

.. Respondents

By Advocate:Mr.V.V.Ashokan
M/s.Iyer & Iyer(R1-3)

The Application having been heard on 30.08.10, the Tribunal on
08.09.10 delivered the following:-



ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The short question involved in this Original Application is that whether the disciplinary action initiated by the higher Disciplinary Authority can be interfered with by a lower Disciplinary Authority or not.

2. The facts which are necessary for a decision of the question raised are that, the applicant was served with a charge memo dated 20.8.2007 by the Senior Deputy Accountant General(Admn.) as the Disciplinary Authority. An Enquiry Officer has been already appointed to conduct the enquiry as per the provisions of the CCS (CCA) Rules. After the enquiry the Enquiry Officer has filed his report finding that the charges are not proved against the applicant. However the Deputy Accountant General(Admn.), the 4th respondent, disagreeing with the findings entered into by the Enquiry Officer issued a notice dated 16.2.2010 to the applicant. Aggrieved by the above notice and the disagreement noted by the Deputy Accountant General(Admn.), the applicant filed the present Original Application.

3. The Original Application has been admitted by this Tribunal and issued an interim order on 5.4.2010. In pursuance to the



notice ordered the respondents filed their reply statement in which it is stated that the charge memo has been issued to the applicant on the ground of his participation in the dharna/demonstrations in connection with the suspension of another employee one S.V.Santhosh Kumar of the office of the first respondent. It is further stated in the reply statement that though the Enquiry Officer has been appointed, as per his report the applicant has not been found guilty of any of the charges. Disagreeing with the said report, the 4th respondent, the Deputy Accountant General(Admn.) had issued Annexure A1 notice which is under challenge in the present O.A. It is further stated in the reply statement that as per the delegation of powers of the Comptroller and Auditor General of India vide Manual of Standing Orders(Admn)(Vol.II), the competent authority to impose penalties and penalties which it may impose under Rule 11 of the CCS(CCA) Rules, 1965 are specified and the said schedule would show that the competent authority in respect of Group C officials is Senior Deputy Accountant General or Deputy Accountant General and both the officers are shown as the competent Disciplinary Authorities. Hence the action now proposed by the Deputy Accountant General(Admn.) is within the jurisdiction of the delegated powers of the 4th respondent. Further it is stated that the applicant being a Clerk cum Typist is a Group C employee and as per the order of the Deputy Accountant

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General(Admn.) any disciplinary proceedings can be initiated against the applicant either by the Senior Deputy Accountant General(Admn.) or by the Deputy Accountant General(Admn.).The reply statement also contains portion of the relevant rules regarding the Disciplinary Authorities. As per Annexure R-1(a) it is stated that for all the Group C posts the Senior Deputy Accountant General/Deputy Accountant General or the officers of equivalent rank as the Appointing Authority. The Appointing Authority of the applicant is both the Senior Accountant General/Deputy Accountant General. Further the stand taken in the reply statement is that as per the provisions of the CCS(CCA)Rules,1965 the Deputy Accountant General or the Senior Deputy Accountant General is the competent authority and there is no differentiation in exercising the powers delegated to them under the said delegation of powers. Further it is stated that in the discharge of duties as provisions of delegation of powers under the Comptroller and Auditor General's Manual of Standing Orders(Admn.) Vol.II(Section-E), the Deputy Accountant General(Admn.) is not a lower authority to the Senior Deputy Accountant General, whereas they are having different functional pay grades but that by itself is not a ground to hold that Senior Deputy Accountant General is superior to Deputy Accountant General(Admn.), while exercising the powers conferred for the purpose of disciplinary action.



4. On getting the reply statement, the applicant has also filed a rejoinder and produced Annexure A6 a charge memorandum issued to another employee dated 17.5.2007 by the Senior Deputy Accountant General(Admn.). Further it is reiterated in the rejoinder that as per Section E of the Manual of Standing Orders of Comptroller and Auditor General of India, the powers under Central Civil Services(Classification, Control and Appeal)Rules,1965 is clear that the Senior Deputy Accountant General(Admn.) is the competent authority to act as the disciplinary authority especially when the charge sheet has been filed by such officer and not by the Deputy Accountant General(Admn.).

5. We have heard the counsel appearing for the applicant Mr.Mohankumar for and on behalf of Mr.T.C.G.Swamy and Shri V.V.Asokan appearing for the respondents. The counsel relies on the MHA O.M.No.6/26/60-Est.(A) dated 8th June, 1962 and contends that once the proceedings are instituted by a higher disciplinary authority, final orders should also be passed by such higher disciplinary authority and the case should not be remitted to a lower disciplinary authority on the ground that on merits of the case it is sufficient to impose a minor penalty and such minor penalty could be imposed by a lower disciplinary authority. The



main trust placed by the counsel for his contention is that the charge memo has been issued against the applicant by the Senior Deputy Accountant General(Admn.) and if so, a lower authority,namely the Deputy Account General (Admn.) is not empowered to disagree with the findings entered into by the Enquiry Officer and has no power to issue Annexure A1 notice. We have already noted as per the reply statement the Senior Deputy Accountant General(Admn.) and Deputy Accountant General(Admn.) are on the same rank and they are equally competent to take disciplinary action against the applicant, the issuance of Annexure A1 notice is within the powers conferred on the Deputy Accountant General(Admn.). Further we have already noted that an enquiry has been ordered and the Enquiry Officer has submitted his report which was disagreed by the Deputy Accountant General, namely the 4th respondent who is also a disciplinary authority for the purpose of the provisions of CCS(CCA)Rules, 1965. If so the reliance placed by the applicant in the office memorandum of the Ministry of Home Affairs dated 8th June,1962 is out of place and not applicable to the facts of the case. Both the Senior Deputy Accountant General(Admn.) and Deputy Accountant General(Admn) are competent Disciplinary Authorities as far the applicant is concerned. Hence the contention raised by the counsel for the applicant is not tenable. Accordingly we answer the question

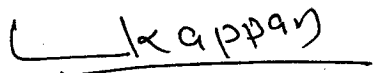
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raised in the O.A. in negative.

6. Yet another question to be considered on the basis of the argument of the counsel appearing for the applicant is that Annexure A-1 notice does not contain the points of disagreement with that of the findings entered into by the Enquiry Officer. We have considered each and every one of the reasons stated in the disagreement notice and we are satisfied that the 4th respondent has considered every point of disagreement and recorded the reasons of such findings also with regard to the findings entered into by the Enquiry Officer. In the above circumstances and on the reasons stated in this order, we are of the considered view that the O.A. is without any merit and is liable to be dismissed. Accordingly the O.A. stands dismissed as meritless. No order as to costs.


(K.NOORJEHAN)
MEMBER(A)


(JUSTICE K.THANKAPPAN)
MEMBER(J)

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